Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4711 of 2001 (S/S)

1. State of U.P. through the Secretary, Irrigation Department, Civil Secretariat, Lucknow.
2. Executive Engineer, Upari Ganga Nahar Modernisation Division-1, (World Bank Project), Roorkee, District Hardwar.

..... Petitioners

Versus

1. Rakesh Kumar S/o Sri Jai Dev Singh C/o Shri H.S. Jauhari, R/o A-50, Shivalik Nagar, BHEL, District Hardwar.
2. Presiding Officer, Labour Court, Dehradun (At present State of Uttaranchal).

..... Respondents

Learned Standing counsel for the petitioners.
Sri Tanveer Alam Khan, learned counsel for the respondent No. 1.

.....

Date: 14.09.2005.

Hon'ble P.C. Verma, J.

This petition has been filed by the petitioners seeking writ of certiorari quashing the impugned award dated 21.12.2000 passed by respondent No.2, contained in Annexure No. 1 to the writ petition.

2. A dispute was referred, vide notification No. 7875/Asstt. I.R.C.P. 17 (S)/2000, dated 14.11.2000 which was registered as Adjudication Case No. 193 of 2000. The reference was made in the following terms:-

> "Whether the termination of services of workman Sri Rakesh Kumar S/o Sri Jai Dev Singh, Beldar/Typist by the employers with effect from 01.07.1992 is justified and legal?" If no, to what benefit/relief the concerned workman is entitled and to what extent?"

3. According to the respondent No. 1/workman, he was under the employment of employers as typist on muster roll with effect from 01.6.1991 to 30.6.1992 but on 01.7.1992 his services were terminated without any prior notice or pay in lieu of notice or retrenchment compensation. The employers admitted that the workman worked in the establishment from 1991 to June 1992 as Beldar/daily wager typist. The Labour Court, upon hearing the parties, held that the termination/retrenchment of the respondent No. 1 is illegal and reinstated him in service with no back wages and awarded Rs. 5000/- as compensation in lieu of back wages with costs of Rs. 1000/-. Feeling aggrieved, the petitioner has come up in this writ petition.

4. The only ground of challenge is that the respondent No.1 had not completed 240 days in a calendar year and it was a specific case before the Labour Court, hence the finding given by the Labour Court is quasi illegal. The Labour Court has dealt with that the statement filed by the employers shows that the respondent No. 1 had worked 86 days during August 1991 to December 1991 and from January 1992 to June 1992 he worked 161 days. Thus, the workman had worked total 247 days from August 1991 to June 1992 and the order of termination is against the provisions of Sec. 6 N of the U.P. Industrial Disputes Act. The Labour Court has rightly held that the workman has worked more than 240 days in a year before the date of termination and his termination without following the procedure given under Sec. 6-N of U.P. Industrial Disputes Act is wholly illegal.

5. Section 6-N of the U.P. Industrial Disputes Act provides for condition precedent to retrenchment of workmen which reads as under: -

> **"6-N Conditions precedent to retrenchment of workmen: -** No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for termination of service;

> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days; average pay for every completed year of service or any part thereof in excess of six months; and
> © notice in the prescribed manner is served on the State Government."

The definition of one year continuous service has been defined under Section 25-B of the Industrial Disputes Act and have been inserted in the Central Act which is not in the State Act, which reads as under:-

> **"25B.** Definition of continuous service:- For the purposes of this Chapter, -
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer –

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of workman employed below ground in a mine; and
(ii) one hundred and twenty days, in any other case."

Thus, if the employee has completed 240 days of continuous service, he cannot be retrenched under Section 6-N of the U.P. Industrial Disputes Act. It is noteworthy that Section 6-N does not provide that completion of one year i.e. completion of 240 days must be preceding to the date of termination. Section 2-g of the U.P. Industrial Disputes Act defines the continuous service as under: -

"2(g) 'Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any

fault on the part of workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry."

6. This definition of Section 6-N and Section 2-g of the U.P. Industrial Disputes Act came into consideration before the Hon'ble Apex Court in the case of ***"U.P. Drugs & Pharmaceuticals Co. Ltd, Vs. Ramanuj Yadav and others {(2003) 8 Supreme Court Cases 334}"*** by which the Apex Court in para 11 and 12 held as under:-

"**11.** *Learned counsel for the appellant, however, relies upon* ***Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. (1970 3 SCC 67.*** *In that case, the Court was considering the scope of Section 25-B of the Industrial Disputes Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date., i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8th December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f. October 19, 1974. This Court said that it is not necessary for the purpose of clause (2)(a) of section 25-B that workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that*

service is continuous service within the meaning of clause (1), his services would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages the situation not governed by clause (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of section 25-B. The question with which we are concerned was not under consideration in Mohan Lal's case. If the viewpoint propounded by the management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of Section 6N of the UP Act, despite his having worked for number of years and fore more than 240 days in each year except the last. Such an intention cannot be attributed to the UP Act. In the present case, as already noticed, the finding of the labour court is that the respondents worked for more than 20 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination the termination was held by the labour court not to be violative of section 6N. Reference may also be made to the decision in Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and another, where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in

U.P. State Cooperative Land Development Bank Ltd. Vs. Taz Mulk Ansari & Others, 1994 Supp. (2) SCC 745, relied upon by learned counsel for the appellant has not applicability since that was in a case of clause (a) of Section 6N and therefore, Section 2(g) had no relevance.

12. *The High Court has rightly concluded that the termination of the respondents was in violation of Section 6N read with Section 2(g) of the UP Act."*

7. In view of above, I do not find any infirmity or illegality in the order passed by the Labour Court. The ratio of Apex Court's judgment is fully covered with the facts and circumstances of the case. The Labour Court has rightly recorded its finding that the workman worked for more than 240 days. Therefore, the termination order of the respondent No.1/ workman was in violation of provisions of Section 6-N of Act.

8. The workman has fully established that he was continuously working from August 1991 to June 1992 with the Department and before terminating his services, he has completed more than 240 working days.

9. Therefore, there is no infirmity or illegality in the order passed by the Labour Court. The findings recorded by the Labour Court are findings of fact which cannot be interfered in exercise of powers under Article 226 of the Constitution of India.

10. The writ petition lacks merit and is dismissed. No order as to costs.

(P.C. Verma, J.)

14.09.2005
P.Singh